

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:23-CV-432-RJC-DCK**

TYRRELL L.S. BENAVIDEZ,)	
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
BANK OF AMERICA, N.A.,)	
)	
Defendant.)	
)	

THIS MATTER IS BEFORE THE COURT on “Defendant Bank Of America N.A.’s Motion To Dismiss Plaintiff’s Complaint” (Document No. 11) filed November 7, 2023; and “Plaintiff’s Motion To Extend Time, Answer To Defendant’s Motion To Dismiss, Motion To File Amended Complaint, Demand For Sanctions Against Defense Counsel” (Document No. 13) and “Plaintiff’s Motion For Leave To file Amended Complaint For Permanent Injunction And Other Equitable Relief” (Document No. 14) filed December 6, 2023. These motions have been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motion, the record, and applicable authority, the undersigned will grant the motion(s) for an extension of time and to amend, and direct that the pending motion to dismiss be denied as moot.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 15 applies to the amendment of pleadings and allows a party to amend once as a matter of course within 21 days after serving, or “if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21

days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed.R.Civ.P. 15(a)(1). Rule 15 further provides:

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.

Fed.R.Civ.P. 15(a)(2).

DISCUSSION

The undersigned finds that pro se Plaintiff has timely sought leave to amend as a matter of course pursuant to Fed.R.Civ.P. 15. See (Document No. 12). As such, the undersigned will allow Plaintiff to file an Amended Complaint which supersedes the original Complaint. Furthermore, the undersigned will direct that “Defendant Bank Of America N.A.’s Motion To Dismiss Plaintiff’s Complaint” (Document No. 11) be denied as moot.

It is well settled that a timely-filed amended pleading supersedes the original pleading, and that motions directed at superseded pleadings may be denied as moot. Young v. City of Mount Ranier, 238 F.3d 567, 573 (4th Cir. 2001) (“The general rule … is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect.”); see also, Fawzy v. Wauquiez Boats SNC, 873 F.3d 451, 455 (4th Cir. 2017) (“Because a properly filed amended complaint supersedes the original one and becomes the operative complaint in the case, it renders the original complaint ‘of no effect.’”); Colin v. Marconi Commerce Systems Employees’ Retirement Plan, 335 F.Supp.2d 590, 614 (M.D.N.C. 2004) (“Earlier motions made by Defendants were filed prior to and have been rendered moot by Plaintiffs’ filing of the Second Amended Complaint”).

To the extent Defendant contends the Amended Complaint is deficient, this Order is without prejudice to Defendant filing a renewed motion to dismiss the Amended Complaint, as appropriate.

IT IS, THEREFORE, ORDERED that “Plaintiff’s Motion To Extend Time, Answer To Defendant’s Motion To Dismiss, Motion To File Amended Complaint, Demand For Sanctions Against Defense Counsel” (Document No. 13) and “Plaintiff’s Motion For Leave To file Amended Complaint For Permanent Injunction And Other Equitable Relief” (Document No. 14) are **GRANTED** to the extent Plaintiff seeks leave, and/or time, to file an Amended Complaint. Plaintiff’s motion(s) are **DENIED** to the extent they seek sanctions against Defendant’s counsel.

IT IS FURTHER ORDERED that *pro se* Plaintiff shall file an Amended Complaint on or before **December 20, 2023.**¹

IT IS FURTHER ORDERED that “Defendant Bank Of America N.A.’s Motion To Dismiss Plaintiff’s Complaint” (Document No. 11) is **DENIED AS MOOT**.

The Clerk of Court is directed to send a copy of this Order to pro se Plaintiff by certified U.S. Mail, return receipt requested.

SO ORDERED.

Signed: December 8, 2023



David C. Keesler
United States Magistrate Judge

¹ The “Administrative Procedures Governing Filing and Service by Electronic Means,” revised January 1, 2018, at Part II, Section A, Paragraph 8, provide that: “If filing a document requires leave of the Court, such as an amended complaint, the attorney shall attach the proposed document as an exhibit to the motion according to the procedures in IV. If the Court grants the motion, the filer will be responsible for electronically filing the document on the case docket.”